



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. FDA-2021-N-0857]

Medical Devices; General and Plastic Surgery Devices; Classification of the Manual

Percutaneous Surgical Set Assembled in the Abdomen

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the manual percutaneous surgical set assembled in the abdomen into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the manual percutaneous surgical set assembled in the abdomen's classification.

We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device.

We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. The classification was applicable on April 30, 2012.

FOR FURTHER INFORMATION CONTACT: Cal Rabang, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4633, Silver Spring, MD 20993-0002, 301-796-6412, Cal.Rabang@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the manual percutaneous surgical set assembled in the abdomen as class II (special controls), which we have determined will provide a reasonable

assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as “postamendments devices” because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through “De Novo” classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105-115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112-144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application (PMA) to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining "substantial equivalence"). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

For this device, FDA issued an order on August 26, 2011, finding the Percutaneous Surgical Set with 5mm or 10mm Attachments not substantially equivalent to a predicate not subject to PMA. Thus, the device remained in class III in accordance with section 513(f)(1) of the FD&C Act when we issued the order.

On September 21, 2011, FDA received Ethicon Endo-Surgery, Inc.'s request for De Novo classification of the Percutaneous Surgical Set with 5mm or 10mm Attachments. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to

establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on April 30, 2012, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 878.4805.¹ We have named the generic type of device manual percutaneous surgical set assembled in the abdomen, and it is identified as a prescription device consisting of a percutaneous surgical set used as a means to penetrate soft tissue to access certain areas of the abdomen. The device's effectors or attachments are provided separately from the percutaneous shaft and are introduced to the site via a traditional conduit such as a trocar. The attachment or effectors are connected to the shaft once the tip of the shaft is inside the abdomen. Once inside the abdomen, the surgical set is used to grasp, hold, and manipulate soft tissues. A surgical instrument that has specialized uses in a specific medical specialty is classified in separate regulations in 21 CFR parts 868 through 892.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

Table 1.--Manual Percutaneous Surgical Set Assembled in the Abdomen Risks and Mitigation Measures

Identified Risks	Mitigation Measures
Adverse tissue reaction	Biocompatibility evaluation
Device failure	Non-clinical performance testing, Sterilization validation, and Shelf life testing
User error	Non-clinical performance testing,

¹FDA notes that the "ACTION" caption for this final order is styled as "Final amendment; final order," rather than "Final order." Beginning in December 2019, this editorial change was made to indicate that the document "amends" the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

	Simulated use testing, and Labeling
Abdominal cavity damage	Non-clinical performance testing, Simulated use testing, and Labeling
Infection	Sterilization validation and Shelf life testing

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. We encourage sponsors to consult with us if they wish to use a non-animal testing method they believe is suitable, adequate, validated, and feasible. We will consider if such an alternative method could be assessed for equivalency to an animal test method. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, manual percutaneous surgical sets assembled in the abdomen are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521). The collections of information in the guidance

document “De Novo Classification Process (Evaluation of Automatic Class III Designation)” have been approved under OMB control number 0910-0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910-0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910-0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910-0073; and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910-0485.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878--GENERAL AND PLASTIC SURGERY DEVICES

1. The authority citation for part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Add § 878.4805 to subpart E to read as follows:

§ 878.4805 Manual percutaneous surgical set assembled in the abdomen.

(a) *Identification.* A manual percutaneous surgical set assembled in the abdomen is a prescription device consisting of a percutaneous surgical set used as a means to penetrate soft tissue to access certain areas of the abdomen. The device’s effectors or attachments are provided separately from the percutaneous shaft and are introduced to the site via a traditional conduit such as a trocar. The attachment or effectors are connected to the shaft once the tip of the shaft is inside the abdomen. Once inside the abdomen, the surgical set is used to grasp, hold, and manipulate soft tissues. A surgical instrument that has specialized uses in a specific medical specialty is classified in separate regulations in parts 868 through 892 of this chapter.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The patient-contacting components of the device must be demonstrated to be biocompatible.

(2) Performance data must demonstrate the sterility of patient-contacting components of the device.

(3) Performance data must support the shelf life of the device by demonstrating continued sterility, package integrity, and device functionality over the requested shelf life.

(4) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be tested:

(i) Dimensional verification testing must be conducted.

(ii) Force verification testing must be conducted. The force testing must demonstrate the forces necessary to insert and operate each component of the device during use as intended.

(iii) Functional verification testing of the device components must be conducted.

(5) Simulated use testing in an anatomically relevant animal model must demonstrate the device's ability to penetrate soft tissue, be assembled in situ, and to grasp, hold and manipulate soft tissues in the intended treatment area.

(6) The labeling must include the following:

(i) Instructions for use, including detailed instructions for instrument assembly, disassembly, and removal; and

(ii) A shelf life.

Dated: December 10, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

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